

7-1-2013

Annual Report Maine Labor Relations Board Fiscal year, 2013

Maine Labor Relations Board

Follow this and additional works at: http://digitalmaine.com/mlrb_docs

Recommended Citation

Maine Labor Relations Board, "Annual Report Maine Labor Relations Board Fiscal year, 2013" (2013). *Labor Relations Board Documents*. Paper 92.
http://digitalmaine.com/mlrb_docs/92

This Text is brought to you for free and open access by the Labor at Maine State Documents. It has been accepted for inclusion in Labor Relations Board Documents by an authorized administrator of Maine State Documents. For more information, please contact statedocs@maine.gov.

L15.1:2013

C.1

ANNUAL REPORT
MAINE LABOR RELATIONS BOARD

Fiscal Year 2013

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) (Supp. 2012) and 979-J(1) (2007).

Introduction

_____The mission of the Maine Labor Relations Board and its affiliated organizations, the Panel of Mediators and the State Board of Arbitration and Conciliation, is to foster and improve the relationship between public employees and their employers. The Maine Labor Relations Board ("Board") protects the rights and enforces the responsibilities established by the four separate labor relations statutes covering Maine's public sector employees. The Board does this by creating bargaining units, conducting secret ballot elections to certify, change or decertify bargaining agents, and processing prohibited practice complaints. The Panel of Mediators and the State Board of Arbitration and Conciliation provide dispute resolution procedures to assist parties in negotiating initial or successor collective bargaining agreements and in resolving contract grievance issues. The focus of this report is the activity of the Labor Board during the fiscal year.

_____The Board had requests for services from most segments of the public sector labor-management community during the past year. Overall demand for the Board's services decreased compared with the previous year. In the second half of the fiscal year, many of the mediators reported that public employers' uncertainty regarding the amount of funds they might be receiving from the State was a major impediment to reaching agreements. For those parties who were engaged in mediation, settlements were more difficult to achieve, resulting in continued high demand for fact-finding and increased demand for interest arbitration. Scarce resources to fund collective bargaining agreements have led to difficult negotiations and several prohibited practice complaints charge violations of the duty to negotiate in good faith. Reversing developments of the last two years, the number of decertification/bargaining agent elections, where unit employees change bargaining representatives, and straight decertification elections decreased significantly this year. In addition, the number of bargaining agent elections, signifying new representation, increased this year.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms. Primary Public Chair Katharine I. Rand of Portland, Alternate Chair Susan L. Higgins of Kennebunk, Employer Representative Karl Dornish, Jr., of Winslow, Alternate Employer Representatives Patricia Dunn of Scarborough and Richard Hornbeck of Bowdoinham, and Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland continued to serve in their respective capacities throughout the year.

Peter T. Dawson, who served on the Board longer than any other member in its history, died unexpectedly on December 19, 2012. Peter was first appointed to the Board as Alternate Chair by Governor McKernan in 1987, and as the Public Chair in 1988, and was re-appointed by Governor King and Governor Baldacci. In 2012, Governor LePage appointed Peter as Alternate Chair, the position he held at the time of his death. Peter's long service afforded him a unique view on the gradual development of the various labor relations laws administered by the Board, always basing his decisions on the express terms of the law. The Board, the Board staff and the public sector labor-management community all miss Peter's steady leadership and dry sense of humor.

On May 21, 2013, Governor LePage nominated Abigail C. Yacoben of West Bath as Alternate Chair and Michael C. Clarke of Bath as Primary Employee Representative, filling the vacancy created by Carol Gilmore's death last year. Ms. Yacoben's appointment was confirmed by the Legislature. Mr. Clarke asked that his nomination be withdrawn, and the position of Primary Employee Representative is vacant at this time.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help.

The Board's web site is the prime source for research of Board precedent, as the scope of collective bargaining issues addressed by Maine courts is quite limited and difficult to research on-line. The search engine used by the Board's web site draws on an extensive

database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers, employees and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. Since its inception the web site has been maintained and updated by Board staff. Over the years, the web site has been highly praised by the labor-management community.

Legislative Matters

Eight bills impacting the Board's jurisdiction were introduced for consideration into this year's Legislative Session.

L.D. 689. Under current law, the State mediators' per diem is \$100 for up to 4 hours of mediation services provided and \$100 for each consecutive period of up to 4 hours thereafter. Labor negotiations occur state-wide and mediators often are required to drive several hours to participate in a mediation session. Mediators are not compensated for travel time beyond receiving mileage at the State rate of \$.44 per mile. L.D. 689 sought to address this concern by compensating mediators for travel time. Rather than consider this stop-gap measure, the Legislature adopted a measure, Chapter 26, Resolves 2013, charging the Board with convening a task force, including representatives of the public sector labor-management community and members of the Panel of Mediators, to study the question of mediator compensation and its impact, not only on the recruitment and retention of able labor mediators but also on the public sector bargaining process as a whole, and report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2014, with recommendations and necessary implementing legislation to provide reasonable compensation for the members of the Panel of Mediators.

One bill, L.D. 786, concerned the policy question of whether employees, who are represented by a bargaining agent but who choose not to become members of the union, may be required to pay a service fee for their share of the union's cost of representing the bargaining unit. As drafted, L.D. 786 would have resulted in several unintended consequences; therefore, the primary sponsor presented an amendment at the work session

that replaced the bill, avoiding the problematic impact. The Legislature did not adopt the bill as amended.

L.D. 831 was also directed at the mandatory service fee question. LD 831 prohibited public and private sector employers from deducting union dues or service fees without the written consent of each employee and rendered any agreement to the contrary null and void. Since L.D. 786 addressed public sector service fees, the sponsor of both bills amended this bill to only apply to private sector collective bargaining as permitted by the National Labor Relations Act, 29 U.S.C. § 164(b). The measure was not adopted by the Legislature.

L.D. 1098. Current law controlling collective bargaining for public school employees provides that the public employer and the bargaining agent have the mutual obligation "[t]o confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration . . . except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies; for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration" L.D. 1098 identified 3 specific topics - "teacher planning and preparation periods, class sizes, [and] staffing levels" - all or part of which have been held to constitute educational policy by the Board, and specified that the 3 would be mandatory subjects of bargaining. The sponsor of the bill was granted leave to withdraw by the Education Committee.

L.D. 1106 provided for the creation, review, and approval of public teacher-led schools and provided that the employees of such enterprises are public employees, within the scope of the Municipal Public Employees Labor Relations Law. Given the broad language defining covered employees under current law, the provision regarding collective bargaining coverage was probably unnecessary and, at most, clarified the inclusion of employees of teacher-led schools. The bill was enacted and will become Law, Chap. 303, P.L. 2013.

L.D. 1221. The bill would have amended the public sector collective bargaining laws to specify that provisions in expired collective bargaining agreements that provided for changes in wages or benefits based on length of service or merit must continue in effect during negotiations for a successor agreement. The sponsor of the bill was granted leave to withdraw by the Labor, Commerce, Research and Economic Development Committee.

L.D. 1346 was directed at the conversion of public schools into public charter schools and provided that teachers at public charter schools authorized by a school board or group of school boards would have the same collective bargaining rights as current public school teachers, and could, by majority vote, opt to bargain collectively as part of an existing school administrative unit bargaining unit. These provisions were problematic because a state is prohibited from enacting legislation regarding collective bargaining by an employer's employees if the employer is subject to the National Labor Relations Act (NLRA). In two recent decisions, the National Labor Relations Board held that private nonprofit corporations that either operate a public charter school or employ teachers and supply them to that public charter school are covered employers under the NLRA and therefore subject to federal law. In addition, Maine's education laws require that public charter schools must "be governed by a board that is independent of a school administrative unit." The teachers at the public charter school will have a separate employer from the school administrative unit board. Combining individuals with different employers in a bargaining unit would be unworkable because an employer cannot make any contractual commitment regarding wages, hours and working conditions to individuals that are not its employees. The Education Committee voted unanimously ought not to pass on this bill.

L.D. 1436. Current law in the State Employees Labor Relations Act (SELRA) provides that supervisory employees should not be included in the same bargaining unit as the employees they supervise. The public policy underlying this unit separation is to avoid potential or actual conflicts of interests between the two groups of employees as well as possible conflicts of loyalty on the part of the supervisors between allegiance owed to the employer and a tendency to support the members of their own bargaining unit. The bill identifies the representation of supervisory employees and their subordinate employees by the same bargaining agent as an inherent conflict of interest and would require that the two groups be represented by separate employee organizations. The bill was not enacted by the Legislature.

Bargaining Unit and Election Matters

During fiscal year 2013, the Board received 28 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 21 of these filings in FY 12. Of the 28 FY 13 filings, 16 were for municipal or county government units, 9 were for K-12 educational units, 2 were for state units, and 1 was for a University

unit. The unit agreements were filed by the following employee organizations:

<u>Maine Education Association/NEA</u>	9 agreements
(RSU 13 ESP Unit)	
(RSU 40 Administrators Unit)	
(RSU 10 Central Office Staff Unit)	
(MSAD 58 Ed Tech. Unit)	
(South Bristol Support Professionals Unit)	
(Nobleboro Support Professionals Unit)	
(Great Salt Bay CSD Support Professionals Unit)	
(Bristol Support Professionals Unit)	
(U/Maine System ACSUM/COLT Unit)	
<u>Teamsters Union Local 340</u>	8
(Eliot Town Office Unit)	
(Eliot Public Works Unit)	
(Mid-Coast Solid Waste Corp. Unit)	
(Dixfield Support Unit)	
(Dixfield Police Supervisor Unit)	
(Dixfield Police Patrol Unit)	
(Presque Isle Fire Department Unit)	
(U/Maine System Service & Maintenance Unit)	
<u>Maine State Employees Association</u>	5
(MePERS Admin. Services Unit)	
(MePERS Prof. & Tech. Services Unit - 2)	
(State P & T Unit and Supervisory Services Unit - 2)	
<u>AFSCME Council 93</u>	2
(Waterville School Support Staff Unit)	
(Winthrop Police Department Unit)	
<u>Amalgamated Transit Union</u>	1
(Bangor Comm. Connector Bus Operators Unit)	
<u>IAFF Local 1611</u>	1
(Bath Fire Department Officers Unit)	
<u>Kennebunk Police Association</u>	1
(Kennebunk Police Unit)	
<u>Saco Workers Alliance</u>	1
(Saco Public Works & Parks Unit)	

Of the 28 filings, 14 were for new units and 14 were for changes to existing units.

Eight (8) unit determinations were filed in FY 13; no unit clarifications were filed. Agreements were reached in 5 cases, 1 went to hearing (decision issued), and 2 cases are pending. Three (3) unit petitions were carried forward from FY 12; a decision was issued in 1 case, 1 was withdrawn, and the other is scheduled for hearing. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement saves substantial time and litigation costs for public

employers and bargaining agents. There were 10 unit petitions filed in FY 12. The unit determinations were filed by the following employee organizations:

<u>Teamsters Union Local 340</u>	6 requests
(Town of Dixfield)	
(Town of Eliot)	
(Mid-Coast Solid Waste Corporation)	
(Town of Van Buren - 2)	
(Westbrook Fire/Rescue Department)	
<u>Federation of Public Employees</u>	1
(Fryeburg Police Department)	
<u>Maine Education Association/NEA</u>	1
(RSU 58 Educational Technicians)	

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a secret ballot bargaining agent election is conducted by the Board. An election is held to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 13 there were 5 voluntary recognitions filed, involving the following employee organizations:

<u>Maine Education Association/NEA</u>	2 voluntary recs.
(RSU 13 ESP Unit)	
(RSU 10 Central Office Unit)	
<u>AFSCME Council 93</u>	1
(Bangor Airport Customer Service Reps, etc., Unit)	
<u>Fraternal Order of Police</u>	1
(Franklin County Law Enforcement Unit)	
<u>Professional Firefighters of Hampden</u>	1
(Fire Department Unit)	

Eighteen (18) bargaining agent election requests were filed in FY 13; 16 elections were held, including matters carried forward from FY 12. The employee organizations were certified as the bargaining agent in 12 cases, and the employees opted for no representative in 4 cases. There were no voluntary recognitions as a result of the petitions, and 2 election matters are pending. The results of the bargaining agent election petitions, including carry-overs from FY 12, are as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Outcome</u>
<u>Teamsters Union Local 340</u>	
(Dixfield Patrol Officers Unit)	Teamsters certified
(Dixfield Police Supervisor Unit)	No Rep. certified
(Dixfield Support Unit)	No Rep. certified

(Eliot Town Office Unit)	Teamsters certified
(Eliot Public Works Unit)	Teamsters certified
(Mid-Coast Solid Waste Corp. Unit)	Teamsters certified
(Norway Public Works Dept. Unit)	Teamsters certified
(Van Burn General Government Unit)	Pending
(Van Buren Public Works Dept. Unit)	Pending
<u>Maine Education Association/NEA</u>	
(Bristol ESP Unit)	No Rep. certified
(Great Salt Bay CSD ESP Unit)	MEA certified
(Nobleboro ESP Unit)	MEA certified
(RSU 58 Ed Tech Unit)	MEA certified
(Sanford Office Staff Unit - AFT Intervenor)	No Rep. certified
(South Bristol ESP Unit)	MEA certified
<u>Maine State Employees Association</u>	
(MECDHH/Baxter School for the Deaf Prof./Super. Unit)	Withdrawn
(MECDHH/Baxter School for the Deaf Support Services Unit)	Withdrawn
<u>AFSCME Council 93</u>	
(RSU 24 Central Office Staff Unit)	AFSCME certified
<u>Amalgamated Transit Union</u>	
____ (Bangor Community Connector Bus Operators Unit)	ATU certified
<u>Federation of Public Employees</u>	
____ (Fryeburg Police Unit)	FPE certified

In FY 12, there were 7 voluntary recognitions filed, 8 bargaining agent election requests received, and 6 elections held.

The most notable development regarding representation matters this year was the significant drop in the number of requests for decertification/certification and straight decertification elections. The former type of petition involves a challenge by the petitioning organization to unseat and replace an incumbent as bargaining agent for bargaining unit members. In decertification petitions, no new union is involved; the petitioner is simply attempting to remove the incumbent agent. The Board received 3 decertification/bargaining agent election requests this year, compared with 14 in FY 12 and 19 in FY 11. In addition, the Board received 1 straight decertification election request this year, compared with 6 in FY 12 and 4 in FY 11. While the expressed rationale for the sharp increase in these filings in FY 12 varied, the overriding reason appeared to be unit employee dissatisfaction with the modest wage and benefit changes negotiated by the incumbent bargaining agents during the severe economic downturn and the belief that a new bargaining agent would be able to negotiate better results. Four (4) elections were held. The results of the decertification/

certification petitions were as follows:

<u>Petitioner (Bargaining Unit)</u>	<u>Incumbent Agent</u>	<u>Outcome</u>
<u>Fraternal Order of Police</u> (U/Maine System Police Unit)	Teamsters Local 340	FOP certified
<u>New England Police Benev. Assn.</u> (Caribou Police Unit)	Teamsters Local 340	NEPBA certified
<u>Old Orchard Beach Waste Water</u> <u>Employees Association (MEU)</u> (Waste Water Treatment Plant Unit)	AFSCME Council 93	OOBWWEA certified

As noted above, the Board received 1 straight decertification petition in FY 13. One election was held. The results of the decertification petition were as follows:

<u>Incumbent Agent</u>	<u>Bargaining Unit</u>	<u>Outcome</u>
AFSCME Council 93	Lisbon General Government Unit	No Rep. certified

Five disclaimers of interest were filed and granted. Disclaimers arise when a bargaining agent no longer wishes to represent a bargaining unit. In such cases, the bargaining agent files a request to disclaim interest with the agency, which gives notice of such intent to the employees in the unit at issue and provides them with an opportunity to object to the request. If no employee objects, there is no collective bargaining agreement in effect, and the bargaining agent has no outstanding financial obligations for bargaining or contract administration activities regarding the unit, the disclaimer will be granted. The employee organization is no longer the bargaining agent and is prohibited from seeking to represent the employees in the disclaimed bargaining unit for a one-year period from the granting of the disclaimer request.

There were 4 election matters carried over from FY 12; consequently, there were 26 such matters requiring attention during the fiscal year. This compares with a total of 36 in FY 12.

The K-12 school reorganization law, 20-A M.R.S.A. § 1464(2)(H) provides that, for Regional School Units where "bargaining units with different bargaining agents must be merged into a single regional school unit-wide bargaining unit," such mergers and subsequent resolution of conflicts concerning representation are resolved by the Board

pursuant to petitions to be filed "not more than 90 days prior to the first August 31st occurring after the 3rd anniversary date of the operational date of the regional school unit." For those regional school units whose operational date was July 1, 2009, the statutory period for the filing of unit merger petitions opened on June 4, 2012. One (1) petition for merger pursuant to this law was been filed with the Board; an objection to the merger was filed and an election was held:

<u>AFSCME Council 93</u>	<u>Outcome</u>
(Waterville Bus Drivers Unit)	For merger
(Custodians and Cafeteria Unit)	For merger

Dispute Resolution

The Panel of Mediators is the cornerstone of the dispute resolution process for public sector negotiations. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the State mediators are summarized in this report and are more fully discussed in the Annual Report of the Panel of Mediators.

Interest mediation is the process through which individual State mediators assist parties in negotiating initial or successor collective bargaining agreements. The number of new interest mediation requests received during the fiscal year decreased significantly, particular in the second half of the year. There were 46 new requests filed this year compared with 69 last year. In addition to the new mediation requests received during FY 13, there were 40 matters carried over from FY 12 that required mediation activity during the year. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year was 86, down from 106 in FY 12.

The lower level of demand for mediation services for the year overall is consistent with the observation reported by several mediators that parties seemed to be slowing the negotiations process, resulting in fewer disputes being ripe for mediation, particularly in the second half of the year. For the past four years, we have been reporting that reduced public resources have made it more difficult to negotiate collective bargaining agreements. Subsequent to publication of the major initiatives included in the State budget for the upcoming biennium, several municipal and K-12 education employers attributed their difficulty in agreeing to cost items due to the uncertainty in the amount of available

resources. They attributed proposals in the State budget to suspend State municipal revenue sharing transfers and to transfer funding for the state share of the teacher retirement program to the local school districts as the source of their concern. Thirty requests for mediation services were filed in the first half of the fiscal year and only 16 in the second half. In FY 12, there were 32 requests in the first half year and 36 the second half and the distribution in FY 11 was 27 and 27. It appears that parties are waiting for the State budget to be finalized before concluding agreements or moving on to mediation.

The settlement rate for cases where mediation was concluded this year, including carry-overs from FY 12, continued the downward trend of the preceding two years. This year's settlement rate was 60.3%. During the past 15 years, the settlement rate has ranged from this year's low to a high of 88.5% in FY 2005, with a mean of 78.4%. In addition to the funding uncertainties mentioned above, the mediators report that it has been more difficult secure settlements this year because austerity measures and health insurance adjustments previously implemented have resulted in increased resistance to further cost containment proposals. In addition, more philosophical issues have been brought to the bargaining table this year and it is always harder to achieve compromise on issues that parties regard as being matters of principle.

Fact-finding is the second step in the three step statutory dispute resolution process. In Fiscal Year 2013, 20 fact finding requests were filed. There were 23 requests received in FY 12. Of the 20 cases, plus 14 carried forward from FY 12, 20 cases went to hearing, 5 were conciliated at hearing, 9 decisions were issued covering 13 units, and 2 decisions are pending. Three (3) petitions were withdrawn or otherwise settled, and 11 are pending. In FY 12, 15 fact-finding hearings were held. The following employee organizations were involved in requests for fact finding services this year:

<u>Teamsters Union Local 340</u>	6 requests
(Calais EMS Unit)	
(Jay Transfer Station Unit)	
(Jay Wastewater Unit)	
(South Berwick Professional Unit)	
(South Berwick Public Works Unit)	
(Waterboro Employees Unit)	
<u>Maine Education Association</u>	5
(Auburn School Dept. Food Services Unit)	
(MSAD 6 Teachers Unit)	
(MSAD 61 Teachers Unit)	

(University of Maine System Faculty Unit)	
(University of Maine System Professional & Admin. Staff Unit)	
<u>AFSCME Council 93</u>	4
(Oxford County Dispatch Unit)	
(Oxford County Supervisor Unit)	
(Penobscot County S. D. Corrections Division Line Unit)	
(South Portland City Bus Drivers Unit)	
<u>Maine State Employees Association</u>	3
(Administrative Unit of Legislative Employees)	
(Governor Baxter School Professional and Supervisory Unit)	
(Governor Baxter School Support Services Unit)	
<u>International Association of Fire Fighters</u>	2
(Augusta Battalion Chiefs Unit)	
(Augusta Firefighters Unit)	
<u>County Patrol Association</u>	1
(York County Patrol Deputies Unit)	
<u>Maine Association of Police</u>	1
(Wells Police/Dispatcher Unit)	
<u>Portland Police Superior Officers Benevolent Association</u>	1
(Portland Police Sergeants, Lieutenants & Captains Unit)	

Interest arbitration is the third and final step in the statutory dispute resolution process. Under various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non monetary issues. Unresolved questions concerning salaries, pensions and insurance are subject to interest arbitration, but an award on these matters is only advisory. The Municipal Public Employees Labor Relations Law, which applies to the overwhelming majority of bargaining situations, does not require parties to notify the Board when they are invoking mandatory interest arbitration. The law does require that arbitration awards be filed with the Board; however, they usually are not. In FY 2012, two matters were scheduled to go to interest arbitration; no interest arbitration decisions were received. This year at least 4 interest arbitration matters went to hearing; one dispute was conciliated at hearing, 2 decisions were issued (1 was filed with the Board); and one case is pending.

Prohibited Practice Complaints

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Fifteen (15) complaints were filed in FY 13. This represents a decrease from the FY 12 level. For the last six years,

including the current year, the number of complaints filed each year has fluctuated from a low of 5 to a high of 24, with the mean being 15. Many of the complaints received during the past year charged violations of the duty to negotiate in good faith.

In addition to the 15 complaints filed in FY 13, there were 21 carry-overs from FY 12, compared with 24 complaints and 15 carry-overs last year. Board panels conducted 4 evidentiary hearings on 2 cases during the year, compared with 2 evidentiary hearings in FY 12. In cases where there are no material facts in dispute, the parties submit their controversy to the Board through a stipulated record and written arguments. The Board issued 4 formal decisions and orders, 2 interim orders (cases that were later withdrawn), and an order involving a consent decree. Board chairs, sitting as prehearing officers, held conferences in 7 cases, compared with 8 in FY 12. Six (6) cases are being held in abeyance at the request of the parties to allow them to try to resolve their differences. Twelve (12) complaints were dismissed or withdrawn at the request of the parties, including two after hearing, 4 were dismissed by the executive director, and one was dismissed by the prehearing officer. One (1) case was deferred to arbitration after prehearing conference. Six (6) complaints await prehearing and/or hearing. One case is in the middle of a briefing schedule.

The Board issued 4 formal decisions and orders in prohibited practice cases this year.:

Local 1476, IAFF, Firefighters Unit v. City of South Portland, No. 12-05 (May 24, 2013). The Board majority rejected the Union's charge that the City of South Portland had a statutory duty to bargain over the decision to implement a new overtime hiring policy that changed the procedure for notifying employees of overtime, but did not change eligibility or the actual rotation list. The Board concluded that the changes did not rise to the level of being a material or significant change in a working condition and that the limited changes were allowed by the management rights clause. The Board majority did, however, require the City to bargain over the impact of the new policy to the extent that it was not already covered by the contract. The dissent would have required the City to bargain over both the decision to implement the policy and the impact.

Maine State Employees Association v. Maine Turnpike Authority, No. 12-08 (February 12, 2013). The Board rejected the Union's charge that disciplining a union member for complying with his attorney's instructions during an arbitration hearing was discriminatory in violation of §965(1)(B). The Board also concluded that the imposition of

the discipline was not interference, restraint or coercion in violation of §965(1)(A), but that the Employer's delay in rescinding the discipline was a §965 (1)(A) violation.

AFSCME Council 93 v. City of Portland, No. 12-10 (November 15, 2012). The Board concluded that the City of Portland violated the Act by unilaterally splitting a vacant full-time bargaining unit position into two part-time positions without first giving notice and an opportunity to bargain to the bargaining agent.

Local 1373, AFSCME Council 93 v. City of Portland, No. 12-13 (November 13, 2012). The Board concluded that the City of Portland was required to provide the information requested by the Union because it was relevant to the bargaining process or to administering an existing contract. The Board further held that in this case the City was not required to provide that information in writing.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. The services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

<u>AFSCME Council 93</u>	4 complaints
(Town of Brunswick)	
(Town of Millinocket)	
(Town of Old Orchard Beach)	
(City of South Portland)	
<u>Maine State Employees Association</u>	4
(Maine Turnpike Authority)	
(State of Maine)	
(State of Maine)	
(State of Maine Bureau of Human Resources)	
<u>Individuals</u>	2
(Maine State Troopers Association and Maine State Police)	
(National Correctional Employees Union and Franklin County)	
<u>IAMAW</u>	1

(Auburn School Department)	
<u>Maine Association of Police</u>	1
_____(City of Old Town)	
<u>Maine State Law Enforcement Association</u>	1
(State Department of Corrections)	
<u>Teamsters Union Local 340</u>	1
_____(Hancock County)	
<u>University of Maine System</u>	1
_____(Associated Faculties of the University of Maine)	

Unit Appeals

_____The Board is authorized by statute to decide appeals of unit-related decisions issued by the Executive Director regarding unit composition and election issues. This year, the Board considered one unit appeal challenging the Executive Director's denial of a petition to add police sergeants to an existing unit of patrol officers. The Executive Director agreed with the Town, and denied the petition to add the sergeants to the patrol officers unit. *Freeport Police Association v. Town of Freeport*, 13-UDA-01 (Nov. 29, 2012). On appeal, the Employer argued that the sergeants exercised supervisory authority over the patrol officers and that including them in the same bargaining unit would result in a conflict of interest. The Board affirmed the Executive Director's decision, concluding that the determination that the sergeants exercised substantial supervisory authority over the patrol officers potentially placing the two groups in conflict was supported by ample evidence in the record and was neither unlawful nor unreasonable.

Interpretive Rulings

_____The labor relations statutes authorize the Board to issue non-binding interpretive rulings to assist parties in understanding the provisions of the law and, thereby, avoiding violating the statutes. No request for interpretive rulings were received this year and the Board did not issue any on its own initiative.

Appeals

_____The Superior Court affirmed the Board's decisions in the only two cases that were appealed last year, and both of those decisions have been appealed to the Law Court. *Aline C. Dupont v. Maine State Employees Association/SEIU Local 1989*, KEN-13-89 (Me. Super. Ct., Ken. Cty, Jan. 22, 2013) (Murphy, J.). This case was the first prohibited practice case issued by the Board under the Judicial Employees Labor Relations Act. The Superior

Court affirmed the Board's conclusion that the complainant had failed to prove a breach of the Union's duty of fair representation. The parties have filed their briefs to the Law Court and the Court indicated that it will decide the appeal without oral argument.

IAFF Local 1650, Augusta Fire Fighters v. City of Augusta, AP-11-64 (Me. Super. Ct., Ken. Cty., Oct. 12, 2012) (Murphy, J.). This case was the first time the Board issued a ruling under the authority granted by 26 M.R.S.A. §964-A(2), which authorizes the Board to make a determination whether a particular issue is enforceable in arbitration pursuant to the status quo doctrine and the procedures established by §964-A(2). The Superior Court affirmed the Board's decision that certain provisions of the expired collective bargaining agreement were enforceable under the status quo doctrine. The Court also rejected the City's arguments that the Board did not have jurisdiction to decide the matter under the terms of 26 M.R.S.A. §964-A(2) and that the Board denied due process to the City by deciding the matter in the same proceeding as a prohibited practice complaint. In its appeal to the Law Court, the City has only appealed the Board's decision that the three provisions of the expired agreement are enforceable under the status quo doctrine and §964-A(2). The parties have filed their briefs and oral argument took place on May 14, 2013. The Law Court's decision is pending.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years and percent change from year to year:

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Unit Determination/ Clarification Requests Number filed–	7	+85% 13	-7.7% 12	+33% 16	-37.5% 10	-20% 8
Agreements on Bargaining Unit (MLRB Form #1) Number filed–	24	-40% 15	+106.7% 31	+16% 36	-41.7% 21	+33% 28
Voluntary Recognitions (MLRB Form #3) Number filed–	1	+100% 2	+550% 13	+61.5% 13	-46% 7	-28.6% 5
Bargaining Agent Election Requests Number filed–	11	+15.4 13	-15.4% 11	0% 11	-37.5% 8	+125% 18

Decertification Election Requests Number filed--	1	-100%	0%	+400%	+50%	-83.3%
Decert./Certification Election Requests Number filed--	5	-20%	0%	+37.5%	-26%	-78.6%
Mediation Requests Number filed--	40	-25%	+64%	-15.6%	+27.8%	-33.3%
Fact-Finding Requests Number filed--	4	+111%	+55.6%	-14.3%	+91.7%	-13%
Prohibited Practice Complaints Number filed--	5	+320%	-6.2%	+17%	+33.3%	-37.5%

The above table indicates that the demand for the Board's different services generally decreased during the fiscal year. The agency's leading business indicator, the level of demand for interest mediation, together with the high number of fact-finding and increased number of interest arbitration matters, reflect the difficulty in concluding agreements in the current economic climate. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and firefighter units, predated the establishment of the agency. Despite these predictions, there was an increase in organizational activity for new bargaining units this year.

During FY 13, public sector labor-management relations in Maine continued to mature, with parties relying on the statutory dispute processes to settle their differences. The development of more mature labor relations is evidenced by the strong demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In sum, the Board's dispute resolution services fostered public sector labor peace during this very difficult and challenging year.

Dated at Augusta, Maine, this 1st day of July, 2013.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Maine Labor Relations Board